

FEDERAL RESERVE SYSTEM

The Colonial BancGroup, Inc.
Montgomery, Alabama

Order Approving the Acquisition of a Bank

The Colonial BancGroup, Inc. (“BancGroup”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Union Bank of Florida, Lauderhill, Florida (“Union Bank”).

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the Federal Register (69 Federal Register 69,369 (2004)).² The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

BancGroup, with total consolidated assets of approximately \$18.2 billion, is the 56th largest depository organization in the United States. BancGroup operates one subsidiary insured depository institution, Colonial Bank, National Association, also in Montgomery (“Colonial Bank”), with branches in Alabama, Florida, Georgia, Nevada, Tennessee, and Texas. BancGroup is the eighth largest depository organization in Florida, controlling deposits of approximately \$5.6 billion, which represent approximately 1.9 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).

¹ 12 U.S.C. § 1842.

² 12 C.F.R. 262.3(b).

Union Bank, with total consolidated assets of approximately \$1.0 billion, is the 43rd largest insured depository institution in Florida, controlling deposits of approximately \$686.7 million. On consummation of the proposal, BancGroup would remain the eighth largest depository organization in Florida, controlling deposits of approximately \$6.3 billion, which represent approximately 2.1 percent of state deposits.³

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of BancGroup is Alabama.⁴ BancGroup proposes to acquire a bank located in Florida.⁵

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁶ In

³ Asset data are as of September 30, 2004, and national rankings are as of June 30, 2004. Deposit data and state rankings are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed through December 1, 2004.

⁴ 12 U.S.C. § 1842(d). Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁵ For purposes of section 3(d), the Board considers a bank to be located in states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) & (d)(2)(B).

⁶ 12 U.S.C. § 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B). BancGroup is well capitalized and well managed, as defined by applicable law. Union Bank has been in existence and operated for the minimum period of time required by

light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.⁷

BancGroup and Union Bank compete directly in the Miami-Fort Lauderdale and West Palm Beach Area banking markets in Florida.⁸ The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets (“market

Florida law. On consummation of the proposal, BancGroup would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount deposits of insured depository institutions in Florida. See Fla. Stat. Ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

⁷ 12 U.S.C. § 1842(c)(1).

⁸ The Miami-Fort Lauderdale market is defined as Broward and Dade Counties. The West Palm Beach Area market is defined as Palm Beach County east of the town of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

deposits”) controlled by BancGroup and Union Bank,⁹ the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹⁰ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in both of these banking markets. After consummation, the Miami-Fort Lauderdale and West Palm Beach Area banking markets would remain moderately concentrated as measured by the HHI. In both markets, the increases in concentration would be small and numerous competitors would remain.¹¹

⁹ Deposit and market share data are as of June 30, 2004, adjusted to reflect subsequent mergers and acquisitions through December 1, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹⁰ Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000 and moderately concentrated if the post-merger HHI is between 1000 and 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

¹¹ The effects of the proposal on the concentration of banking resources in these banking markets are described in the Appendix.

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies were afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in either of the two banking markets in which BancGroup and Union Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

The Board is also required under section 3(c) of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and to consider certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record including, among other things, information provided by BancGroup, confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy,

asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant and the target, including their capital positions, asset quality, and earnings prospects and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that BancGroup has sufficient financial resources to effect the proposal. BancGroup and its subsidiary bank are well capitalized and would remain so on consummation of this proposal. BancGroup will acquire all the shares of Union Bank from UB Financial Corporation, Sunrise, Florida, the parent company of Union Bank. The transaction will be funded through a combination of BancGroup common stock and cash raised by BancGroup through a stock issuance.

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of BancGroup, Colonial Bank, and Union Bank, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. BancGroup, Colonial Bank, and Union Bank are considered well managed. The Board also has considered BancGroup's plans to integrate Union Bank and the proposed management, including the risk management systems, of the resulting organization.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and future prospects of the organizations and

the other supervisory factors involved are consistent with approval of the proposal.

Convenience and Needs Considerations

In acting on this proposal, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹² The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals. The Board has considered carefully the convenience and needs factor and the CRA performance records of Colonial Bank and Union Bank in light of all the facts of record.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a

¹² 12 U.S.C. § 2901 et seq.

detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.¹³

BancGroup's subsidiary depository institution, Colonial Bank, received a "satisfactory" rating at its most recent CRA performance evaluation, as of February 25, 2002, by the Federal Reserve Bank of Atlanta.¹⁴ Union Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of December 2, 2002.

BancGroup has indicated that it would continue Colonial Bank's CRA-related loan, investment, grant, and service programs and fair lending policies at the combined entity after consummation.

B. CRA Performance of Colonial Bank and Union Bank

Colonial Bank. Colonial Bank received an overall rating of "high satisfactory" under the lending test at its most recent CRA performance evaluation. Examiners reported that the bank's lending levels reflected good responsiveness to its assessment areas' credit needs, including a good level of loans reportable under the Home Mortgage Disclosure Act ("HMDA")¹⁵ and loans to businesses with gross annual revenues of \$1 million or less. They commended Colonial Bank's level of HMDA-reportable and small business lending in LMI census tracts and the bank's use of innovative and flexible loan programs in serving its assessment areas' credit needs, including several affordable housing loan programs. The evaluation also found that Colonial

¹³ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁴ At that time, Colonial Bank was a state-chartered member bank of the Federal Reserve System. Colonial Bank converted to a national bank charter in 2003.

¹⁵ 12 U.S.C. § 2801 et seq.

Bank made a relatively high level of community development loans, totaling \$38.2 million, in its assessment areas during the evaluation period.¹⁶ Colonial Bank represented that since the examination, it has originated approximately \$263 million in qualified community development loans in its assessment areas.

Colonial Bank also received overall ratings of “high satisfactory” under the investment and service tests. Examiners reported that the bank made a significant level of qualified community development investments and grants, and found that Colonial Bank’s systems for delivering retail banking services were accessible essentially to all segments of the bank’s assessment areas. Examiners also found that the bank provided a relatively high level of community development services throughout its assessment areas and specifically noted that these services were highly responsive to affordable housing needs.

Union Bank. As previously noted, Union Bank received a “satisfactory” rating at its most recent CRA performance evaluation. Examiners found that Union Bank’s overall lending activity demonstrated an adequate responsiveness to the credit needs of its assessment areas, and that the geographic distribution of the bank’s loans and its community development lending activity were also adequate.¹⁷ They reported that the bank’s level of qualified community development investments within its assessment areas was very good. Examiners also favorably noted that Union Bank’s retail banking delivery systems were reasonably accessible to essentially all portions of its assessment areas.

¹⁶ The evaluation period was from January 1, 2000, to December 31, 2001.

¹⁷ The evaluation period was from January 1, 2001, to October 31, 2002.

C. HMDA and Fair Lending Record

The Board's review of the record in this case included a review of HMDA data reported by Colonial Bank. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data generally do not indicate that Colonial Bank is excluding any racial group or geographic area on a prohibited basis.¹⁸

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by Colonial Bank with fair lending laws and the CRA performance records of Colonial Bank and Union Bank that are detailed above. Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of Colonial Bank or Union Bank. These established efforts demonstrate that, on balance, the records of performance of Colonial Bank and Union Bank in meeting the convenience and needs of their communities are consistent with approval of this proposal. The record in this case also reflects an opportunity for Colonial Bank to improve its mortgage lending to African-American borrowers in its communities. Colonial Bank has recognized the need to improve its lending in this regard and is in the process of establishing objectives and strategies for improved performance, particularly for lending to minorities and

¹⁸ The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about the covered loans. HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

in predominantly minority census tracts. The Board expects that Colonial Bank will continue to take steps to improve its mortgage lending performance to African-American borrowers.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by BancGroup, and confidential supervisory information. The Board notes that the proposal would provide the combined entity's customers with access to a broader array of products and services in expanded service areas, including access to expanded branch and automated teller machine networks. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by BancGroup with the condition imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the condition and these commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than

three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁹ effective January 25, 2005.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁹ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

APPENDIX

Banking Market Data

Miami-Fort Lauderdale, Florida

BancGroup is the 11th largest depository institution in the Miami-Fort Lauderdale market, controlling \$1.5 billion in deposits, which represents approximately 1.8 percent of market deposits. Union Bank is the 21st largest depository institution in the market, controlling \$627.1 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancGroup would be the ninth largest depository institution in the Miami-Fort Lauderdale market, controlling approximately \$2.1 billion in deposits, which would represent approximately 2.5 percent of market deposits. The HHI for the Miami-Fort Lauderdale market would increase 2 points to 1029, and 99 other bank and thrift competitors would remain in the market.

West Palm Beach Area, Florida

BancGroup is the 11th largest depository institution in the West Palm Beach Area market, controlling \$452.0 million in deposits, which represents approximately 1.8 percent of market deposits. Union Bank is the 36th largest depository institution in the market, controlling \$59.6 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancGroup would be the ninth largest depository institution in the West Palm Beach Area market, controlling approximately \$511.6 million in deposits, which would represent approximately 2.1 percent of market deposits. The HHI for the West Palm Beach Area market would increase 1 point to 1422, and 59 other bank and thrift competitors would remain in the market.